

<b>UNITED STATES BANKRUPTCY COURT</b> <b>Northern District of Alabama</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: Jefferson County, Alabama	Case Number: 11-05736	
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): James Hernandez		
Name and address where notices should be sent: Robert Potter, Esq., Mann & Potter, P.C. 600 University Park Place, Suite 250 Birmingham, AL 35209  Telephone number: (205) 879-9661    email: robert@mannpotter.com		<b>COURT USE ONLY</b>
Name and address where payment should be sent (if different from above): Robert Potter, Esq., Mann & Potter, P. C. 600 University Park Place, Suite 250 Birmingham, AL 35209  Telephone number: (205) 879-9661    email: robert@mannpotter.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ <i>(If known)</i>  <b>Filed on:</b> _____
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>100,000.00</u>  If all or part of the claim is secured, complete item 4.  If all or part of the claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
<b>2. Basis for Claim:</b> <u>Please see Complaint attached.</u> (See instruction #2)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b>  <u>N o n e</u>	<b>3a. Debtor may have scheduled account as:</b>  <u>None</u> (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b>  <u>N o n e</u> (See instruction #3b)
<b>4. Secured Claim (See instruction #4)</b> Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
<b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>  <b>Value of Property:</b> \$ _____  <b>Annual Interest Rate</b> _____ % <input type="checkbox"/> Fixed    or <input type="checkbox"/> Variable (when case was filed)		<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____  <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____  <b>Amount Unsecured:</b> \$ <u>100,000.00</u>
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).  <b>Amount entitled to priority:</b> \$ _____
<small>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>		
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this		



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**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain: Please see attached complaint

**8. Signature:** (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, ☐ I am a guarantor, surety, indorser, or other codebtor.  
(Attach copy of power of attorney, if any.) or their authorized agent. (See Bankruptcy Rule 3005.)  
(See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Robert Potter

Title: Attorney at Law

Company: Mann & Potter, P.C.

Address and telephone number (if different from notice address above):

s/Robert Potter

07/12/2012

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

*Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.*

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.*

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**3b. Uniform Claim Identifier:**

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**4. Secured Claim:**

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).**

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

**8. Date and Signature:**

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

## DEFINITIONS

## INFORMATION

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. § 506 (a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. § 507 (a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.



IN THE CIRCUIT COURT FOR JEFFERSON COUNTY, ALABAMA  
BESSEMER DIVISION

CIVIL ACTION NO. CV-2011-900271

JAMES HERNANDEZ,

Plaintiff,

vs.

BLACK DIAMOND LEASING, LLC; ALFA MUTUAL INSURANCE COMPANY; MARKEL AMERICAN INSURANCE COMPANY; JEFFERSON COUNTY, ALABAMA; JEFFERSON COUNTY COMMISSION;

**No. 1**, whether singular or plural, the driver of the motor vehicle which collided with plaintiff's motor vehicle and whose negligence caused the plaintiff's injury on the occasion made the basis of this suit; **No. 2**, whether singular or plural, the owner of the motor vehicle which collided with plaintiff's motor vehicle on the occasion made the basis of this suit; **No. 3**, whether singular or plural, that entity or those entities who or which afforded any uninsured/under-insured insurance coverage of the motor vehicle driven by James Hernandez in the occurrence made the basis of this lawsuit; **No. 4**, whether singular or plural, that entity or those entities who or which provided maintenance and upkeep on the motor vehicle(s) involved in the occurrence made the basis of this lawsuit; **No. 5**, whether singular or plural, that entity or those entities who or which did any repair work on the motor vehicle(s) involved in the occurrence made the basis of this complaint; **No. 6**, whether singular or plural, that entity or those entities who or which manufactured and/or distributed the motor vehicle(s) involved in the occurrence made the basis of this lawsuit, or any of the component parts thereof; **No. 7**, whether singular or plural, that entity or those entities who or which were the master or principal of the driver of the motor vehicle(s) involved in the occurrence made the basis of this lawsuit; **No. 8**, whether singular or plural, that entity or those entities for whom the driver of the motor vehicle which collided with plaintiff's motor vehicle was performing some type of service or employment duty at the time of this collision; **No. 9**, whether singular or plural, that entity or those entities who or which negligently entrusted the motor vehicle(s) involved in the occurrence made the basis of this lawsuit to the drivers thereof at the time of said occurrence; **No. 10**, whether singular or plural, that entity or those entities on whose behalf the vehicle or vehicles involved in the collision made the basis of this lawsuit was being operated at the time of said occurrence; **No. 11**, whether singular or plural, that entity or those entities who or which was responsible for the condition or state of repair of the vehicle(s) involved in the occurrence made the basis of this lawsuit; **No. 12**, whether singular or plural, that entity or those entities, that individual or those individuals who or which repaired, altered, or maintained the vehicle(s) involved in the occurrence made the basis of this lawsuit; **No. 13**, whether singular or plural, that entity or those entities who or which issued, or had a duty to issue, warnings or instructions regarding the use or operation of any of the vehicles involved in the occurrence made the basis of this lawsuit, any component part thereof, or any attendant equipment used or available for use therewith; **No. 14**, whether singular or plural, that entity or those entities who or which tested, inspected, approved, or issued any approval of any of the vehicles involved in

the occurrence made the basis of this lawsuit, any component part thereof, or any attendant equipment used or available for use therewith; **No. 15**, whether singular or plural, that entity or those entities who or which had supervisory authority relating to the maintenance, operation, or to the selection, training and hiring of drivers of any of the vehicles involved in the occurrence made the basis of this lawsuit; **No. 16**, whether singular or plural, that entity or those entities who or which issued any policy of insurance which provided coverage for plaintiff's injuries received on the occasion made the basis of this lawsuit (including, but not limited to, uninsured/underinsured motorist coverage); **No. 17**, whether singular or plural, that entity or those entities who or which provided any insurance coverage for any of the motor vehicles involved in the occurrence made the basis of this lawsuit, for the driver of each respective motor vehicle or for any of the named fictitious parties defendant listed or described herein; **No. 18**, whether singular or plural, that entity or those entities other than those entities described above whose breach of contract or warranty contributed to cause the occurrence made the basis of this lawsuit; **No. 19**, whether singular or plural, that person or those persons who were employees or executive officers of plaintiff's employer who had been delegated responsibility by their employer to provide plaintiff with a safe place to work or a reasonably safe work environment; **No. 20**, whether singular or plural, being the correct legal designation of that or those persons, firms, partnerships, corporations or entities who employed the Plaintiff at all times herein. **No. 21**, whether singular or plural, that entity or those entities other than those entities described above, which is the successor in interest of any of those entities described above; **No. 22**, whether singular or plural, that entity or those entities other than those entities described above, which was the predecessor corporation of any of the entities described above. Plaintiff avers that the identities of the fictitious parties defendant is otherwise unknown to plaintiff at this time, or if their names are known to plaintiff at this time their identities as proper parties defendant is not known to plaintiff at this time, but their true names will be substituted by amendment when ascertained.

Defendants

## **SECOND AMENDED AND RESTATED COMPLAINT**

COMES NOW the Plaintiff, by and through the undersigned counsel of record, and hereby amends and restates the Plaintiff's original complaint, to include as proper party defendants, Jefferson County, Alabama and Jefferson County Commission, as follows:

### **Parties**

1. The Plaintiff, James Hernandez, is an individual resident citizen of Winston County, Alabama, over the age of nineteen (19) years, and at all times herein was an employee of Defendant

Black Diamond Leasing, LLC.

2. The Defendant, Black Diamond Leasing, LLC. is an Alabama corporation with its principal place of business in Walker County, Alabama.

3. The Defendant, Alfa Mutual Insurance Company (hereinafter "Alfa"), is an Alabama corporation who actively conducts business by agent in Jefferson County, Bessemer Division, Alabama.

4. The Defendant, Markel American Insurance Company (hereinafter "Markel"), is a foreign corporation who actively conducts business by agent in Jefferson County, Bessemer Division, Alabama.

5. The Defendant, Jefferson County, is a county located in the State of Alabama

6. The Defendant, Jefferson County Commission, is located in Jefferson County, Alabama.

7. Fictitious party defendants are described as follows: **No. 1**, whether singular or plural, the driver of the motor vehicle which collided with plaintiff's motor vehicle and whose negligence caused the plaintiff's injury on the occasion made the basis of this suit; **No. 2**, whether singular or plural, the owner of the motor vehicle which collided with plaintiff's motor vehicle on the occasion made the basis of this suit; **No. 3**, whether singular or plural, that entity or those entities who or which afforded any uninsured/under-insured insurance coverage of the motor vehicle driven by James Hernandez in the occurrence made the basis of this lawsuit; **No. 4**, whether singular or plural, that entity or those entities who or which provided maintenance and upkeep on the motor vehicle(s) involved in the occurrence made the basis of this lawsuit; **No. 5**, whether singular or plural, that entity or those entities who or which did any repair work on the motor vehicle(s) involved in the



occurrence made the basis of this complaint; **No. 6**, whether singular or plural, that entity or those entities who or which manufactured and/or distributed the motor vehicle(s) involved in the occurrence made the basis of this lawsuit, or any of the component parts thereof; **No. 7**, whether singular or plural, that entity or those entities who or which were the master or principal of the driver of the motor vehicle(s) involved in the occurrence made the basis of this lawsuit; **No. 8**, whether singular or plural, that entity or those entities for whom the driver of the motor vehicle which collided with plaintiff's motor vehicle was performing some type of service or employment duty at the time of this collision; **No. 9**, whether singular or plural, that entity or those entities who or which negligently entrusted the motor vehicle(s) involved in the occurrence made the basis of this lawsuit to the drivers thereof at the time of said occurrence; **No. 10**, whether singular or plural, that entity or those entities on whose behalf the vehicle or vehicles involved in the collision made the basis of this lawsuit was being operated at the time of said occurrence; **No. 11**, whether singular or plural, that entity or those entities who or which was responsible for the condition or state of repair of the vehicle(s) involved in the occurrence made the basis of this lawsuit; **No. 12**, whether singular or plural, that entity or those entities, that individual or those individuals who or which repaired, altered, or maintained the vehicle(s) involved in the occurrence made the basis of this lawsuit; **No. 13**, whether singular or plural, that entity or those entities who or which issued, or had a duty to issue, warnings or instructions regarding the use or operation of any of the vehicles involved in the occurrence made the basis of this lawsuit, any component part thereof, or any attendant equipment used or available for use therewith; **No. 14**, whether singular or plural, that entity or those entities who or which tested, inspected, approved, or issued any approval of any of the vehicles involved in the occurrence made the basis of this lawsuit, any component part thereof, or any attendant equipment used or available

for use therewith; **No. 15**, whether singular or plural, that entity or those entities who or which had supervisory authority relating to the maintenance, operation, or to the selection, training and hiring of drivers of any of the vehicles involved in the occurrence made the basis of this lawsuit; **No. 16**, whether singular or plural, that entity or those entities who or which issued any policy of insurance which provided coverage for plaintiff's injuries received on the occasion made the basis of this lawsuit (including, but not limited to, uninsured/underinsured motorist coverage); **No. 17**, whether singular or plural, that entity or those entities who or which provided any insurance coverage for any of the motor vehicles involved in the occurrence made the basis of this lawsuit, for the driver of each respective motor vehicle or for any of the named fictitious parties defendant listed or described herein; **No. 18**, whether singular or plural, that entity or those entities other than those entities described above whose breach of contract or warranty contributed to cause the occurrence made the basis of this lawsuit; **No. 19**, whether singular or plural, that person or those persons who were employees or executive officers of plaintiff's employer who had been delegated responsibility by their employer to provide plaintiff with a safe place to work or a reasonably safe work environment; **No. 20**, whether singular or plural, being the correct legal designation of that or those persons, firms, partnerships, corporations or entities who employed the Plaintiff at all times herein. **No. 21**, whether singular or plural, that entity or those entities other than those entities described above, which is the successor in interest of any of those entities described above; **No. 22**, whether singular or plural, that entity or those entities other than those entities described above, which was the predecessor corporation of any of the entities described above. Plaintiff avers that the identities of the fictitious parties defendant is otherwise unknown to plaintiff at this time, or if their names are known to plaintiff at this time their identities as proper parties defendant is not known to plaintiff at this time, but their true names will



be substituted by amendment when ascertained.

### **Facts**

8. On or about April 6, 2011, Plaintiff, James Hernandez, was operating a motor vehicle on John's Road at or near the intersection of Bell-Sumpter Road and Weller Road in the Bessemer Division of Jefferson County, Alabama.

9. The traffic control signals and/or guardrails and/or roadway on John's Road at or near the intersection of Bell-Sumpter Road and Weller Road in the Bessemer Division of Jefferson County, Alabama, were negligent, recklessly and/or wantonly installed, maintained, services, repaired and/or erected on the subject Jefferson County road. Defendants Jefferson County and the Jefferson County Commission were aware of or should have known of the condition of the traffic control signals and/or guardrails and/or roadway on the subject Jefferson County road, which resulted in the Plaintiff's injuries and damaged a set forth hereinabove.

10. On or about April 6, 2011, the Plaintiff, James Hernandez, was operating a motor vehicle on John's Road at or near the intersection of Bell-Sumpter Road and Weller Road in the Bessemer Division of Jefferson County, Alabama. At the aforesaid time and place, the Plaintiff was caused to be injured as a result of the negligent and improper construction of the road in which the Plaintiff was traveling, including, but not limited to, its condition, paved surface, lack of appropriate signs and/or guardrails.

11. The Defendants, Jefferson County, Jefferson County Commission, and one or more of the fictitious party defendants listed and described hereinabove, negligently, recklessly and/or wantonly failed to keep and maintain the roadway free and clear of potentially hazardous conditions. Defendants Jefferson County, Jefferson County Commission, and one or more of the fictitious party

defendants listed and described hereinabove, had actual or constructive notice and/or were delinquent in not discovering and replacing the defective traffic control signals, guardrails, road and/or hazardous condition, and were negligent and/or wanton in affirmatively creating a hazard of allowing the defective traffic control signals to remain and/or hazardous condition to remain on the roadway.

12. On or about April 6, 2011, Plaintiff, James Hernandez, was employed by the Defendant Black Diamond Leasing, LLC. At the time of the incident, Plaintiff was operating a 2009 Kenworth W900L bearing vehicle identification number 1XKW049X39J238393 (tag number 64X95091), in the line and scope of his employment for Defendant Black Diamond Leasing, LLC. on John's Road at or near the intersection of Bell-Sumpter Road and Weller Road in the Bessemer Division of Jefferson County, Alabama, when a phantom vehicle driving in the Plaintiff's lane on the wrong side of the road, forced the Plaintiff to leave the roadway resulting in the injuries and damages suffered by the Plaintiff. Said negligent and/or wanton conduct was a proximate cause of Plaintiff's injuries and damages hereinafter described.

13. At the aforesaid time and place, while working in the line and scope of his said employment, the Plaintiff was caused to suffer severe injuries to his person while operating an automobile on behalf of his employer, Defendant Black Diamond Leasing, LLC.

14. This suit is brought pursuant to Ala. Code, § 25-5-11, et seq., seeking worker's compensation and third party benefits as a result of the Plaintiff's injuries within the line and scope of his employment with Defendant Black Diamond Leasing, LLC. The Plaintiff's claims arise under the worker's compensation laws of the State of Alabama.

15. The Defendant Alfa issued automobile liability policies insuring the Plaintiff. These insurance policies provided, upon other things, protection for the Plaintiff from damages caused by

the negligence, wantonness or willfulness of uninsured or under-insured motorists.

16. The Defendant Markel issued automobile liability policies insuring the Plaintiff. These insurance policies provided, upon other things, protection for the Plaintiff from damages caused by the negligence, wantonness or willfulness of uninsured or under-insured motorists.

17. One or more of the fictitious party defendants listed and described hereinabove, issued motor vehicle insurance policies to Defendant Black Diamond Leasing, LLC., insuring the Plaintiff. These insurance policies provided, upon other things, protection for the Plaintiff from damages caused by the negligence, wantonness or willfulness of uninsured or under-insured motorists.

18. Fictitious party defendants listed and described in the caption hereinabove, whose more correct names and identities are unknown to plaintiff, but who will be correctly named and identified when ascertained, are the respective entities who or which fit the descriptions above.

19. Plaintiff alleges that the injuries and damages hereinafter described are a proximate consequence of the negligent, wanton and/or wrongful conduct of the phantom vehicle, Jefferson County, Alabama, Jefferson County Commission, and one or more of the fictitious party defendants listed and described hereinabove.

20. The aforesaid wrongful, negligent and/or wanton conduct of each of the above-described defendants, including the fictitious parties defendant, combined and concurred, and as a proximate consequence thereof, the Plaintiff was injured and damaged as follows:

- a. Plaintiff suffered serious injuries to his person which were attended by great physical pain and mental anguish.
- b. Plaintiff was caused to be permanently injured.
- c. Plaintiff was caused and will be caused in the future to expend large sums of money in the nature of doctor, hospital, drug and other medical expenses in and about an

effort to heal and cure said injuries.

- d. Plaintiff was caused to be permanently unable to pursue many normal and usual activities.
- e. Plaintiff's earning capacity was caused to be greatly and permanently diminished.
- f. Plaintiff was caused to lose time from employment thereby sustaining a loss of earnings.
- g. All other damages to which the Plaintiff may be entitled by law.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory and punitive damages in an amount to be determined by a jury of their peers plus the cost of this action.

### **COUNT I**

#### **Worker's Compensation**

21. The Plaintiff hereby adopts and incorporates by reference the allegations in the preceding paragraphs of this Complaint.

22. On or about April 6, 2011, while working in the line and scope of his employment for the Defendant Black Diamond Leasing, LLC., the Plaintiff was caused to suffer injuries to his left leg, knee, shoulder, head and whole body while working in Jefferson County, Bessemer Division, Alabama. As a result of said injuries Plaintiff has been caused to suffer a permanent impairment and disability and to incur substantial medical expenses and to lose time from employment and thereby sustaining a loss of earnings and loss of future earnings.

23. At the time and place as set forth above, the Plaintiff was working in the line and scope of his employment for the Defendant, Black Diamond Leasing, LLC.

24. As a direct and proximate consequence of the aforesaid injuries, it has been determined

that the Plaintiff suffers a permanent impairment and disability and has had restrictions and limitations imposed by his treating physicians.

25. The Plaintiff promptly notified the Defendant, Black Diamond Leasing, LLC., of his accident and injuries.

26. The Plaintiff has not reached maximum medical improvement. As a proximate consequence for the injuries the Plaintiff suffered while working in the line and scope of his employment for the Defendant, Black Diamond Leasing, LLC., the Plaintiff has sustained permanent injuries which entitle him to workmen's compensation benefits under the Alabama workmen's compensation statute.

WHEREFORE, Plaintiff demands judgment against the Defendant for all sums he is entitled to recover under the Alabama workmen's compensation statute existing for injuries as set forth above plus cost of this action.

## **COUNT II**

### **Negligence**

27. The Plaintiff hereby adopts and incorporates by reference the allegations of the preceding paragraphs of the Complaint.

28. This suit is brought pursuant to Ala. Code, § 25-5-11, et seq., as a result of the Plaintiff's injuries which occurred within the line and scope of his employment with Defendant Black Diamond Leasing, LLC. These claims arise by virtue of Ala. Code, § 25-5-11 (1975).

29. At the times set forth hereinabove, a phantom vehicle, and one or more of the fictitious party defendants listed and described hereinabove, negligently operated a motor vehicle in Jefferson County, Bessemer Division, Alabama which caused the Plaintiff to leave the roadway, thereby causing

the Plaintiff to sustain severe injuries and damages as set forth hereinabove.

30. As a direct and proximate consequence of the above-described negligent and wrongful conduct, the Plaintiff has been injured and damaged as described hereinabove.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory and punitive damages in an amount to be determined by a jury of their peers plus interest and costs of this matter.

### **COUNT III**

#### **Wanton and Reckless Conduct**

31. The Plaintiff hereby adopts and incorporates by reference the allegations of the preceding paragraphs of the Complaint.

32. This suit is brought pursuant to Ala. Code, § 25-5-11, et seq., as a result of the Plaintiff's injuries which occurred within the line and scope of his employment with Defendant Black Diamond Leasing, LLC. These claims arise by virtue of Ala. Code, § 25-5-11 (1975).

33. At the times set forth hereinabove, the phantom vehicle, and one or more of the fictitious party defendants listed and described hereinabove, wantonly and/or recklessly operated a motor vehicle in Jefferson County, Bessemer Division, Alabama which resulted in the Plaintiff leaving the roadway thereby causing the Plaintiff to sustain severe injuries and damages as set forth hereinabove.

34. As a direct and proximate consequence of the above-described wanton and reckless conduct, the Plaintiff was injured and damaged as described hereinabove.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory and punitive damages in an amount to be



determined by a jury of their peers plus interest and costs of this matter.

#### **COUNT IV**

##### **Negligent, Reckless and/or Wanton Violations of Rules of the Road**

35. The Plaintiff hereby adopts and incorporates by reference the allegations of the preceding paragraphs of the Complaint.

36. This suit is brought pursuant to Ala. Code, § 25-5-11, et seq., as a result of the Plaintiff's injuries which occurred within the line and scope of his employment with Defendant Black Diamond Leasing, LLC. These claims arise by virtue of Ala. Code, § 25-5-11 (1975).

37. At the times set forth hereinabove, the phantom vehicle, and one or more of the fictitious party defendants listed and described hereinabove, negligently, recklessly and/or wantonly violated the rules of the road in Jefferson County, Bessemer Division, Alabama by crossing in the Plaintiff's lane of travel causing the Plaintiff to leave the roadway thereby causing the Plaintiff to sustain severe injuries and damages as set forth hereinabove.

38. As a direct and proximate consequence of the above-described negligent, reckless and/or wanton conduct, the Plaintiff has been injured and damaged as described hereinabove.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory and punitive damages in an amount to be determined by a jury of their peers plus interest and costs of this matter.

#### **COUNT V**

##### **Uninsured/Underinsured Motorist Claim I**

39. The Plaintiff hereby adopts and incorporates by reference the allegations in the preceding paragraphs of this Complaint.

40. The Plaintiff avers that at all times referenced to herein he was insured by, or beneficiary to, policies of insurance issued by the Defendant Alfa, a corporation, under a policy of motor vehicle insurance, whereby said Defendant was to provide the Plaintiff with protection against bodily injury, death, and property damage by uninsured and underinsured motorists for and in consideration of a premium paid to said defendant by the Plaintiff.

41. The Plaintiff further avers that said injuries and damages herein described arose out of and were a proximate consequence of the negligent or wanton conduct of phantom vehicle, and one or more of the fictitious party defendants listed and described herein, uninsured or underinsured motorists as aforesaid; that, at the time of Plaintiff's said injuries and damages arising out of the accident caused by phantom vehicle, the Plaintiff's aforesaid policy of insurance was in full force and effect and all premiums were paid according to the terms of said policy; and that Defendant Alfa corporation, has failed to pay for said bodily injuries and damages as suffered by the Plaintiff.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory and punitive damages in an amount to be determined by a jury of their peers plus the cost of this action.

## **COUNT VI**

### **Uninsured/Underinsured Motorist Claim II**

42. The Plaintiff hereby adopts and incorporates by reference the allegations in the preceding paragraphs of this Complaint.

43. The Plaintiff avers that at all times referenced to herein he was insured by, or beneficiary to, policies of insurance issued by the Defendant Markel, a corporation, under a policy of motor vehicle insurance, whereby said Defendant was to provide the Plaintiff with protection

against bodily injury, death, and property damage by uninsured and underinsured motorists for and in consideration of a premium paid to said defendant by the Plaintiff's employer, Black Diamond Leasing, LLC.

44. The Plaintiff further avers that said injuries and damages herein described arose out of and were a proximate consequence of the negligent or wanton conduct of phantom vehicle, and one or more of the fictitious party defendants listed and described herein, uninsured or underinsured motorists as aforesaid; that, at the time of Plaintiff's said injuries and damages arising out of the accident caused by phantom vehicle, the Plaintiff's aforesaid policy of insurance was in full force and effect and all premiums were paid according to the terms of said policy; and that Defendant Markel, a corporation, has failed to pay for said bodily injuries and damages as suffered by the Plaintiff.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory and punitive damages in an amount to be determined by a jury of their peers plus the cost of this action.

## **COUNT VII**

### **Negligence II**

45. The Plaintiff hereby adopts and incorporates by reference the allegations of the preceding paragraphs of the Complaint.

46. On or about April 6, 2011, Plaintiff, James Hernandez, was operating a motor vehicle on John's Road at or near the intersection of Bell-Sumpter Road and Weller Road in the Bessemer Division of Jefferson County, Alabama, when there was defective traffic control signs and/or guardrails and/or roadway on the subject Jefferson County road. Defendants Jefferson County and the Jefferson County Commission were aware of or should have known of the defective condition

of subject roadway which caused or contributed to cause the accident made the basis of this suit.

47. Defendants Jefferson County, Jefferson County Commission, and/or one or more of the fictitious party defendants listed and described hereinabove, negligently and/or wantonly failed to maintain the subject roadway by allowing the Plaintiff to be injured and damaged.

48. As a direct and proximate consequence of the Defendants' conduct, the Plaintiff has been caused to be damaged as described herein.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs demand judgment against the Defendants, Jefferson County, Alabama and Jefferson County Commission, jointly and severally, for compensatory damages in an amount to be determined by a jury of their peers plus the cost of this action.

## **COUNT VIII**

### **Premises Liability**

49. The Plaintiff hereby adopts and incorporates by reference the allegations of the preceding Paragraphs of the Complaint.

50. At the aforesaid time and place, the Defendant, Jefferson County, Jefferson County Commission, and one or more of the fictitious party defendants listed and described in the caption hereinabove, were the owner of the subject roadway and as such had a duty and responsibility to provide the Plaintiff with a safe roadway to travel. Said Defendants negligently breached this duty by failing to provide the Plaintiff with a safe roadway to travel. Said negligent conduct was a proximate cause of Plaintiff's injuries and damages.

51. Defendants Jefferson County, Jefferson County Commission, and one or more of the fictitious party defendants listed and described in the caption hereinabove, were owners of the subject

roadway and, as such, each said defendant had the right to and did control the conditions, methods, and manner in which work was performed at the time and place of the occurrence made the basis of Plaintiff's complaint. Said Defendants negligently failed to properly control the conditions, methods, and manner in which said work was performed, and said negligent conduct was a proximate cause of Plaintiff's injuries and damages.

52. At the aforesaid time and place, the Defendants Jefferson County, Jefferson County Commission, and one or more of the fictitious party defendants listed and described in the caption hereinabove, did negligently allow Plaintiff to be injured.

53. The Defendants Jefferson County, Jefferson County Commission, and one or more of the fictitious party defendants listed and described in the caption hereinabove, negligently failed to warn Plaintiff of the dangers associated with the potentially hazardous condition for the purpose of eliminating the possibility of said Plaintiff being injured, and said negligent, wanton and/or willful conduct was a proximate cause of Plaintiff's injuries described hereinabove.

54. Plaintiff alleges that the injuries and damages were caused as a proximate consequence of the negligent, and other wrongful conduct of the Defendants Jefferson County, Jefferson County Commission, and the fictitious party defendants listed and described hereinabove.

55. The aforesaid wrongful, negligent, conduct of each of the above-described Defendants, including the fictitious parties defendant, combined and concurred, and as a proximate consequence thereof, the Plaintiff was caused to be severely injured.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands judgment against the Defendants, Jefferson County, Alabama and Jefferson County Commission jointly and severally, for compensatory damages in an amount to be determined by a jury of their peers plus the cost of this

action.

**COUNT X**

**Negligent Hiring, Training and Supervision**

56. The Plaintiff hereby adopts and incorporates by reference the allegations in the preceding paragraphs of this Complaint.

57. On or about April 6, 2011 the Defendants Jefferson County, Jefferson County Commission, and one or more of the fictitious party defendants were the employers, principals or masters of person(s) maintaining the subject roadway where the Plaintiff was injured, and as such, had the authority and duty to supervise the hiring, training and supervision of agents acting on their behalf.

58. Said Defendants negligently hired, trained and/or supervise person(s) maintaining the subject roadway where the Plaintiff was injured, or failed to exercise said supervisory control and said negligence and/or wanton conduct was cause of the Plaintiff's damages.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands judgment against the Defendants, Jefferson County, Alabama and Jefferson County Commission, jointly and severally, for compensatory damages in an amount to be determined by a jury of their peers plus the cost of this action.



s/Robert Potter \_\_\_\_\_  
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Fax: (205) 879-9663

**JURY DEMAND**

Plaintiff hereby demands a trial by struck jury of all issues to which the Plaintiff is entitled to a trial by jury excluding the Plaintiff's claim for worker's compensation benefits for which the Plaintiff requests a bench trial in accordance with Alabama law.

s/Robert Potter \_\_\_\_\_  
Robert Potter

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this the th day of July, 2011, electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Michael L. Haggard, Esq.  
Smith, Tyra, Thomas & Haggard, LLC  
P.O. Box 586  
Alabaster, Alabama 35007

James C. Gray, III, Esq.  
Lloyd, Gray, Whitehead & Monroe, P.C.  
2501 - 20<sup>th</sup> Place South, Suite 300  
Birmingham, Alabama 35223

I hereby certify that I have mailed by U. S. Postal Service the document to the following non-CM/ECF participants:

Keith J. Pflaum, Esq.  
Porterfield, Harper, Mills & Motlow, P.A.  
22 Inverness Center Parkway, Suite 600  
Birmingham, Alabama 35242-4821

s/Robert Potter  
OF COUNSEL

**DEFENDANTS' ADDRESSES:**

Jefferson County, Alabama  
David Carrington, President  
County Commissioners Office  
716 N. Richard Arrington Jr. Blvd., Suite 230  
Birmingham, Alabama 35203

Jefferson County Commission  
David Carrington, President  
County Commissioners Office  
716 N. Richard Arrington Jr. Blvd., Suite 230  
Birmingham, Alabama 35203

**PLEASE SERVE THE SUMMONS AND COMPLAINT, TOGETHER WITH ALL DISCOVERY.**